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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re University of Florida Tissue Bank, Inc.

Serial No. 75/292,960

Gerard H. Bencen of Bencen & Van Dyke, P.A. for University
of Florida Tissue Bank, Inc.

Martha L. Fromm, Trademark Examining Attorney, Law Office
106 (Mary Sparrow, Managing Attorney)

Before Seeherman, Hanak and Hairston, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

University of Florida Tissue Bank, Inc. has appealed
the refusal of the Trademark Examining Attorney to register
REGENERATION TECHNOLOGIES, INC. as a trademark for "medical
products, namely, grafts of human bone and other tissues,"
in Class 5, and "surgical implants made from human bone and

other tissue," in Class 10.¹ Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods.

Applicant and the Examining Attorney have filed briefs.² An oral hearing was not requested.

It is essentially the Examining Attorney's position that REGENERATION TECHNOLOGIES is merely descriptive of applicant's goods, and that the addition of the word INC., an entity designation without source indicating function, does not avoid the descriptiveness of the mark as a whole. The Examining Attorney has made of record dictionary definitions of the words "regenerate" ("*Biol.* regrow or cause (new tissue) to regrow to replace lost or injured tissue");³ "regeneration" ("reproduction or reconstitution of a lost or injured part");⁴ and "technology" ("the study

¹ Application Serial No. 75/292,960, filed May 16, 1997, asserting a bona fide intention to use the mark in commerce.

² In its brief applicant has, for the first time, made reference to certain third-party registrations for what are asserted to be REGENERATE or REGENERATION marks. The Examining Attorney has objected to our consideration of these registrations because they were not made of record prior to the filing of the appeal, and indeed have still not been properly made of record, applicant merely listing registration numbers and goods in its brief. The Examining Attorney's objection is well taken on both points, and these registrations have not been considered.

³ The Oxford Dictionary and Thesaurus, © 1996.

⁴ Stedman's Medical Dictionary, 26th ed., © 1995.

or use of the mechanical arts and applied sciences").⁵ In addition, the Examining Attorney has made of record excerpts from articles taken from the NEXIS data base, including the following which include references to "regeneration technology" or "regeneration technologies."⁶

Headline: Osiris Therapeutics strikes deal to fund biotechnology research
Osiris said it hold worldwide marketing rights to regeneration technologies or treatments developed from the alliance.
"The Baltimore Sun," March 17, 1998

Tissue regeneration technology is complicated. But the basic idea is simple: If it cracks or rips, regrow it.
"The Columbus Dispatch," March 28, 1994

An Anchorage orthopedic medical device company has signed an agreement with a children's hospital for research and limb regeneration technology.
"Alaska Journal of Commerce," August 9, 1993

...leading corporate financings and negotiating strategic partnerships will be of great value to Orquest as we

⁵ The Oxford Dictionary and Thesaurus, © 1996.

⁶ Applicant has objected to those articles which were published subsequent to the filing of applicant's application, stating that "even if third parties have used the Applicant's mark in a descriptive fashion subsequent to the Applicant's filing date, this should not be used against the Applicant." Brief, p. 14. However, our determination of whether a mark is merely descriptive is based on current purchaser perception, and if recent articles show that a term is, or has become descriptive, such articles are clearly relevant. Applicant has not provided any evidence that it has objected to such descriptive use, or otherwise attempted to assert its trademark rights in connection with the articles.

continue developing our bone and cartilage regeneration technologies." "Business Wire," May 7, 1998⁷

In addition to the Company's tissue regeneration technologies and products, Integra LifeSciences has a variety of other technologies and medical products.

"PR Newswire," January 14, 1998

Degenerative disc disease—only one of the applications for Orquest's new bone regeneration technology—is the most common identifiable cause of the chronic back pain suffered by more than five million Americans.

"Business Wire," June 18, 1996

P.I. Medical's expertise will be combined with that of USBiomaterials' Bioglass (R) bone and soft tissue regeneration technology in order to develop a wider range of implantable devices without rejection from the body's defense system.

"PR Newswire," May 31, 1994

Applicant has stated that it intends to use its mark in connection with medical products made from human bone and other tissues. Applicant also states that its "products have, as one important function, the regeneration of damaged tissue." Response filed June 17, 1998.

⁷ We recognize that this listing, as well as those following, are taken from wire reports, and therefore we have no evidence that these articles were actually published in newspapers. Applicant has not objected to the excerpts on this basis, and we have considered them to the extent that they reflect the authors' views regarding the phrase "regeneration technolog(ies)(y)."

Section 2(e)(1) prohibits the registration of a mark which, when used on or in connection with the applicant's goods, is merely descriptive of them. The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. **In re Venture Lending Associates**, 226 USPQ 285 (TTAB 1986).

As applicant has acknowledged, one important function of its goods is the regeneration of damaged tissue. The NEXIS evidence shows that "regeneration technology" or "regeneration technologies" is a term which is used to refer to bone and tissue regeneration treatments. Thus, when the mark REGENERATION TECHNOLOGIES, INC. (INC. having no source-indicating value) is used in connection with grafts of human bone and other tissues, and surgical implants made from human bone and other tissue, the relevant purchasers of such products will immediately understand that these products are used for tissue (including bone tissue) regeneration.

Applicant has made various arguments in which it appears to dissect its mark into the separate elements REGENERATION and TECHNOLOGIES, and then to discuss the descriptiveness of each. As the evidence indicates, however,

the phrase "regeneration technologies" or "regeneration technology" in its entirety has a descriptive meaning with respect to applicant's identified goods.⁸ See **In re Shiva Corp.**, 48 USPQ2d 1957 (TTAB 1998).

Applicant argues that "if the average consumer was [sic] unaware that applicant was providing medically relevant services, the mark 'REGENERATION TECHNOLOGIES, INC.' would at the most provide only the vaguest suggestion of this fact. However, applicant ignores the well-established principle that the question of whether a term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the significance that the mark is likely to

⁸ We would also point out that registrations for REGENERATION per se for non-medical items (registrations which, as previously stated, were not properly made of record) do not establish that REGENERATION is not descriptive of surgical implants and grafts of human bone and other tissue. Further, applicant's reliance on **In re Hutchinson Technology, Inc.**, 852 F.2d 552, 7 USPQ2d 1490 (Fed. Cir. 1988), is misplaced. That case involved the question of whether HUTCHINSON TECHNOLOGY, taken as a whole, was primarily merely a surname. Although the Court discussed the impact of the word TECHNOLOGY in determining that issue, the question before the Court was never whether the mark was merely descriptive. Further, the specific statements made by the Court in terms of the descriptiveness of TECHNOLOGY indicate, at most, that the word TECHNOLOGY, without any other term, may not describe with sufficient particularity various electronic components. It should also be noted that the Court remanded the application to the Board for the entry of a disclaimer of "technology"; the Office requires disclaimers only of unregistrable material, which would include merely descriptive words.

have, because of the manner in which it is used, to the average purchaser as he encounters goods bearing the mark in the marketplace. **In re Engineering Systems Corp.**, 2 USPQ2d 1075 (TTAB 1986). Because of the specialized nature of applicant's goods, they would be marketed only to those in the medical field, and such purchasers, viewing the mark in connection with the goods, would immediately understand from the mark REGENERATION TECHNOLOGIES, INC. that the surgical implants and grafts are used for tissue regeneration, which is, as applicant acknowledges, an important function of its goods.⁹ Although applicant also appears to argue that purchasers will not be aware of the specifics of how its goods regenerate tissue, it is sufficient if a mark describes a single significant feature or function of the goods. See **In re Venture Lending Associates**, supra. Again, applicant itself has stated that the regeneration of damaged tissue is an important feature of its goods.

⁹ Applicant has made reference to a West Virginia company called Regeneration Technologies Inc. which manufactures carbon-activated devices. Applicant argues that the use by that company of Regeneration Technologies Inc. as its name shows that REGENERATION TECHNOLOGIES INC. cannot be descriptive of applicant's goods. This argument is not persuasive. That third-party use for different goods is totally irrelevant to the question before us, which is whether applicant's mark is merely descriptive of applicant's identified goods.

We also reject applicant's semantics argument that the goods themselves are not regenerated from anything, and are therefore not related to regeneration technologies per se. It is clear from the evidence of record that the goods are used in regeneration technologies.

Decision: The refusal of registration is affirmed.

E. J. Seeherman

E. W. Hanak

P. T. Hairston
Administrative Trademark Judges
Trademark Trial and Appeal Board